

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

COUNTY OF OSWEGO INDUSTRIAL  
DEVELOPMENT AGENCY,

Plaintiff,

-v-

FULTON COGENERATION ASSOCIATES, LP.,  
LIONS CAPITAL MANAGEMENT, LLC, aka LION  
CAPITAL MANAGEMENT, LLC, FIMAB,  
PROMENEUR & HAUSMANN, INC., EL PASO  
MERCHANT ENERGY-PETROLEUM COMPANY.,  
and ANR VENTURE FULTON COMPANY,

Defendants.

APPEARANCES:

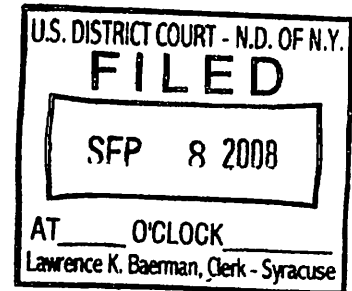
Hiscock & Barclay, LLP  
Robert B. Liddell, Esq., of Counsel  
One Park Place  
300 South State Street  
Syracuse, New York 13221  
Attorneys for Plaintiff

Nixon, Peabody LLP  
Daniel J. Hurteau, Esq., of Counsel  
Omni Plaza, Suite 900  
30 South Pearl Street  
Albany, New York 12207  
Attorneys for El Paso Merchant Energy-Petroleum  
Company and ANR Venture Fulton Company

Hon. Norman A. Mordue, Chief U.S. District Judge:

ORDER

The plaintiff, by its attorneys, Hiscock & Barclay, LLP, having duly moved for an order,  
pursuant to C.P.L.R. §6218, to authorize the sale of certain property which is subject to the Fourth



5:05-CV-926

Amended Order of Attachment in this case dated January 28, 2008, and to pay over the proceeds to the Oswego County Sheriff to hold, and the motion having been taken on submission,

Upon reading and filing the order to show cause, the affidavit of Robert B. Liddell, Esq., sworn to on the 11th day of August, 2008, the affidavit of L. Michael Treadwell sworn to on August 7, 2008, all in support of the motion, and there being no opposition to the motion, and after due deliberation having been held thereon,

NOW, upon motion of Hiscock & Barclay, LLP, attorneys for the plaintiff, it is

ORDERED that plaintiff's motion to authorize the sale of defendant Fulton Cogeneration Associates, LP's attached property as set forth in the attached Exhibit "A" (the "Attached Property") is granted, and it is further

ORDERED that the Sheriff of Oswego County shall accept the terms of the purchase offer from Noelle Consulting, LLC dated August 6, 2008 ("Purchase Offer") for the sale of the Attached Property, which is attached hereto as Exhibit "B," and shall indicate such acceptance by countersigning the Purchase Offer, and it is further

ORDERED that in accordance with the Purchase Offer, upon tender of the full purchase price of \$2,500,000, the Sheriff of Oswego County shall deliver a bill of sale for the Attached Property as set forth in the attached Exhibit "C" to Noelle Consulting, LLC, and that such bill of sale shall, pursuant to this Order, sell, assign, transfer, convey and deliver, "as is" and without any warranty or representation all of Fulton Cogeneration Associates, LP's right title and interest in the Attached Property free and clear of all liens and encumbrances to have and to hold forever, and such transfer shall constitute a full, complete, and final conveyance of the Attached Property, and it is further

ORDERED that the Sheriff of Oswego County shall retain the proceeds from the sale as set

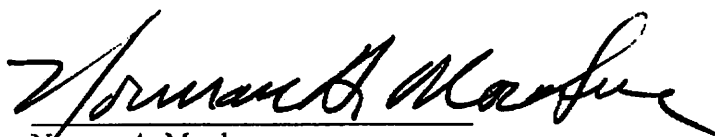
forth in N.Y.C.P.L.R. §6218 until further order of the Court or until disposed of pursuant to N.Y.C.P.L.R. §6226, and it is further

ORDERED that plaintiff's lien of attachment granted herein in connection with the Attached Property shall continue and attach to the proceeds of the sale herein, and it is further

ORDERED that the Sheriff of Oswego County shall oversee the removal of the Attached Property by Noelle Consulting, LLC after payment has been received.

IT IS SO ORDERED

Date: September 8, 2008



Norman A. Mordue  
Chief United States District Court Judge

**EXHIBIT A**

**Exhibit A: Description of Assets**

One (1) GE 7LM5000-GE-NDBG05 Gas turbine generator set consists of following

- Turbine Engine serial number: 474-146, power turbine serial number: PT026
- Brush BDAX-290X generator, 52.153 mw, 13.8 kv, serial number: 61173A-2G
- Turbine lube oil system
- Generator lube oil system
- Liquid fuel system
- Gas fuel system
- Water injection system
- Steam injection system
- Off line and on line water wash system
- Hydraulic start system
- Air inlet system
- Exhaust air system
- Enclosure ventilation system
- Turbine control panel
- Generator control panel
- Generator breaker panel
- MCC

One (1) Zum HRSG, order number: 1777 consists of following

- HP steam: 160,000 lbs/hr, 650 psig/ 650 deg f
- LP steam; 67,925 lbs/hr, 220 psig/486 deg f
- FD fan with 100 hp motor
- Four (4) Boiler feed water pumps with motors
- Stack

One (1) Westinghouse dcs control system

One (1) 115 -13.8 kv Substation consists of following

- One (1) 30/40/50 mva ABB oil filled transformer, serial number: SNL5593
- Three (3) ABB type 12PA40-20 SF6 breakers
- Five (5) Siemens AVB, 2000 amp disconnect switches
- One (1) lot ct's, pt's, substation structure and hardware
- Control trailer with control panels
- 40 kw diesel generator set

Two (2) Zum package boilers, Type Keystone 13M, serial numbers: 101464/101465

- Three boiler feed water pumps

One (1) DM water system with pumps and motors

One (1) air compressor package

One (1) Lot of spare parts

One (1) lot Tools

One (1) Workshop crane

One (1) Auxiliary transformer with MCC and aux. Breaker cabinet

One (1) Battery and charging system

One (1) lot of manuals, drawings, history records

One (1) Lot of workshop equipment

One (1) Gas compressor skid with controls

One (1) lot of piping, valves and cables

One (1) Ford utility vehicle F350d, VIN# 1FDWF37F92EA13223

All other equipment inside the powerhouse and substation not specifically listed.

**EXHIBIT B**

**Noelle Consulting LLC**  
**225 Sable Trace Drive**  
**Acworth GA 30102**  
**973-841-0257**

August 6, 2008

To whom it may concern:

We are pleased to make this offer to purchase the Fulton Cogeneration GE LM5000 combustion turbine and any related equipment including, but not limited to, the turbine generator, gas compressor, controls, all substation equipment and boilers as more fully detailed and set forth in *Exhibit A*, that is attached and made part of this offer, and which are located at 662 South 7<sup>th</sup> Street, Fulton, NY 13069 (collectively, the "Assets").

As consideration for the purchase of the Assets, we are offering to pay two million, five hundred thousand dollars (\$2,500,000.00) in immediately available funds at closing (the "Purchase Price"), subject to the following terms and conditions:

1. We shall deposit \$100,000 with the Sheriff of Oswego County upon the issuance of an order authorizing the sale of the Assets which shall be applied to the Purchase Price at closing. The balance of the Purchase Price shall be paid immediately upon Seller's delivery of a bill of sale to the Assets which shall provide that the Assets are free and clear of any liens, charges, restrictions or other claims. Failure to deliver clean title for the Assets within 90 days of the date of Seller's countersignature to this offer shall permit us, at our discretion, to terminate this offer and entitle us to a full refund of the deposit.
2. Upon passage of title, we shall assume full responsibility for dismantling and removing the Assets from their present location at 662 South 7<sup>th</sup> Street, Fulton, NY 13069 (the "Facility"). Prior to the dismantling and removal of the Assets, the Sheriff of Oswego County shall disconnect the power to the Facility. We shall assume responsibility for providing any temporary power and/or lighting for the duration of the removal operations at the Facility.
3. The dismantling and removal of the Assets shall begin as soon as reasonably practical following consummation of the transaction. Once ownership is transferred, full access to the Facility for the dismantle and load out process only shall be provided. Site access will be coordinated through the Oswego County Sheriff's Department.
4. Prior to the removal and dismantling process, we shall provide and keep in force, such insurance policies as shall be acceptable to the Sheriff. Said insurance policies shall name the County of Oswego Industrial Development Agency as an additional insured. All work performed by us shall be performed in a safe and workmanlike manner and in accordance with all applicable laws.
5. We shall remove only the Assets set forth on attached Exhibit A and assume responsibility for repairs and/or damages to the interior of the facility that may be caused by or in any way connected to our removal and dismantling of the Assets, except for cosmetic repairs and/or damages to the exterior of the facility. Damages to the exterior exclude the openings normally expected to occur by the removal of plant equipment.

6. To the best of your knowledge, the Assets are free from any hazardous material and asbestos.
7. Drawings, documents and turbine service and history records that are available at the Facility shall be included as part of the sale.
8. The Assets are being purchased "as is, where is" and Seller disclaims any and all representations and/or warranties in connection therewith.
9. Because the removal and dismantling process involves risk to Seller on account of our entry into the Facility, we hereby assume all risk of loss, damage or injury to persons or property occasioned by negligence or otherwise, and arising out of or in any way connected with the removal and/or dismantling of the Assets from the Facility, and we hereby expressly agree to indemnify, defend and save harmless, the Seller and the County of Oswego Industrial Development Agency, and their respective officers, agents or employees, from and against any and all claims arising out of such loss, damage or injury and from all costs and expenses connected therewith.
10. We shall provide the name(s) of the parties who will remove the equipment to the Sheriff for his approval, and any such approval will not be unreasonably denied.
11. We will be responsible for returning the premises to a safe and secure condition following the removal of all equipment (to the Sheriff's reasonable satisfaction).
12. The Sheriff will be consulted and will have final decision-making authority during the dismantling and removal process for site supervision, site safety and site security issues.

If the foregoing offer is agreeable to you, please sign in the space indicated below to evidence your acceptance and return a copy to me.

Signed this 6th day of August, 2008, by:

(signature of Robert Tonnesen)  
Robert Tonnesen  
President, Noelle Consulting LLC

ACCEPTED AND AGREED TO BY SELLER  
THIS \_\_\_\_\_ day of \_\_\_\_\_, 2008

By:  
Name:  
Title:



Exhibit A: Description of Assets

- One (1) GE 7LM5000-GE-NDBG05 Gas turbine generator set consists of following  
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Generator lube oil system  
Liquid fuel system  
Gas fuel system  
Water injection system  
Steam injection system  
Off line and on line water wash system  
Hydraulic start system  
Air inlet system  
Exhaust air system  
Enclosure ventilation system  
Turbine control panel  
Generator control panel  
Generator breaker panel  
MCC
- One (1) Zum HRSG, order number: 1777 consists of following  
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LP steam; 67,925 lbs/hr, 220 psig/486 deg f  
FD fan with 100 hp motor  
Four (4) Boiler feed water pumps with motors  
Stack
- One (1) Westinghouse dcs control system
- One (1) 115 –13.8 kv Substation consists of following  
One (1) 30/40/50 mva ABB oil filled transformer, serial number: SNL5593  
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Five (5) Siemens AVB, 2000 amp disconnect switches  
One (1) lot ct's, pt's, substation structure and hardware  
Control trailer with control panels  
40 kw diesel generator set
- Two (2) Zum package boilers, Type Keystone 13M, serial numbers: 101464/101465  
Three boiler feed water pumps
- One (1) DM water system with pumps and motors  
One (1) air compressor package  
One (1) Lot of spare parts  
One (1) lot Tools  
One (1) Workshop crane  
One (1) Auxiliary transformer with MCC and aux. Breaker cabinet  
One (1) Battery and charging system  
One (1) lot of manuals, drawings, history records  
One (1) Lot of workshop equipment  
One (1) Gas compressor skid with controls  
One (1) lot of piping, valves and cables  
One (1) Ford utility vehicle F350d, VIN# 1FDWF37F92EA13223  
All other equipment inside the powerhouse and substation not specifically listed.

**EXHIBIT C**

**BILL OF SALE**

Pursuant to and subject to the court Order attached hereto and the terms and conditions of that certain purchase offer (the "**Purchase Offer**"), dated as of August 6, 2008, from Noelle Consulting LLC (the "**Buyer**") to the Sheriff of Oswego County, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Sheriff of Oswego County, on behalf of Fulton Cogeneration Associates ("**Seller**"), hereby sells, assigns, transfers, conveys and delivers, "as is" and without any warranty or representation, to the Buyer and its successors and assigns, as of the Closing (as defined in the Purchase Offer), all of Fulton Cogeneration Associates' right, title and interest in and to all of the Assets listed on Exhibit A attached hereto (the "**Assets**"), free and clear of all liens and encumbrances to have and to hold forever. Capitalized terms not defined herein shall have the meanings assigned to them in the Purchase Offer.

IN WITNESS WHEREOF, Seller has caused this instrument to be duly executed and delivered on this \_\_\_\_ day of September, 2008.

**"SELLER"**

SHERIFF OF OSWEGO COUNTY in the name of  
Fulton Cogeneration Associates, LP

By: \_\_\_\_\_

Name:

Title:

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